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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,302	05/16/2006	Srinivas Gutta	US030456US1	3047

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EXAMINER

MARANDI, JAMES R

ART UNIT	PAPER NUMBER
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2623

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,302	Applicant(s) GUTTA ET AL.	
	Examiner JAMES R. MARANDI	Art Unit 4157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/16/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by D.J. Zigmond et al., WO 99/66719 (hereinafter "Zigmond").

Regarding claim 1, Zigmond discloses:

A method for inserting replacement commercials into a data stream (Figure 5), **the method comprising: receiving the data stream** (Figure 5, element 90); **detecting at least one commercial in the data stream** (Figure 5, element 90); **determining a characteristic of program content at least prior to the at least one commercial** (Page 18, lines 5-7, and 14-18; Page 19, lines 20-26; Page 20, lines 9-12); **and replacing the at least one commercial in the data stream with a replacement commercial which is selected based at least in part on the determining** (Figure 4).

Regarding claim 2, **wherein the characteristic is an audio characteristic in the program content at least prior to the at least one commercial.** (Figures 4, 5; Page 18, lines 5-7, and 14-18; Page 20, lines 9-12; Page 35, claim 37)

Regarding claim 3, **wherein the audio characteristic is a speech pattern of the program content at least prior to the at least one commercial.** Speech pattern as claimed and as disclosed is the same as audio characteristics and is rejected by the same analysis as claim 3.

Regarding claim 4, **wherein the replacing comprises replacing the at least one commercial with a replacement commercial having a speech pattern within a predetermined threshold of the speech pattern of the program content at least prior to the at least one commercial.** Zigmond's teaches matching of content rating between the program and commercial to be inserted (Page 19, lines 20-26) as one embodiment of his invention (See also claim 27). Speech pattern and any audio signatures limitations are fully met by Zigmond.

Claims 5- 11 are further rejected by the same analysis as claims 1-4.

Regarding claim 12, **wherein the characteristic is one or more electronic program guide (EPG) characteristics of the program content at least prior to the at least one commercial.** (Page 18, lines 15-22)

Regarding claim 13, **wherein the replacing comprises replacing the at least one commercial with a replacement commercial having one or more EPG characteristics within a predetermined threshold of the EPG characteristics in the program content at least prior to the at least one commercial.** (Page 18, lines 15-22)

Regarding claim 14, **wherein the one or more EPG characteristics is genre,** Zigmond's teaching, as reflected in Page 18, lines 14-22, are broad and comprehensive which include not only genre, but other characteristics which are inherent in EPG and is well known within the art.

Regarding claim 15, **further comprising: determining a recommendation for a viewer based on at least one of the viewer's viewing behavior and explicit recommendations of the viewer; wherein the replacing further comprises replacing the at least one commercial in the data stream with a replacement commercial which also is selected based at least in part on the recommendation.** (Page 18, lines 23-31; Page 19, lines 1-6)

3. Claims 16- 19, a device effectuating the method of claims 1-15, are hereby rejected by the same analysis.

4. Claim 20, a computer program product effectuating the method of claims 1-15, is hereby rejected by the same analysis.
5. Claim 21, **a program storage device readable by machine, tangibly embodying a program of instructions executable by the machine,** performing the method of claim 1, is hereby rejected by the same analysis.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES R. MARANDI whose telephone number is (571)270-1843. The examiner can normally be reached on 8:00 AM- 5:00 PM M-F, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vu Le can be reached on (571) 272-7332. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James R. Marandi/
Patent Examiner

/Vu Le/
Supervisory Patent Examiner, Art Unit 4157